IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1131 OF 2002

Shri. Sachin Suresh Bedmutha ...Petitioner
Vs.
Shri M.S. Jagtap & Ors. ...Respondents

Mr.Manoj S. Mohite for the Petitioner
Mrs. S.D.Shinde, A.P.P for the State
Mr. R.F. Lambay for Respondent No.4

CORAM: SHRI J.N.PATEL &
SMT. ROSHAN DALVI, JJ.
DATED: 27TH SEPTEMBER, 2006

P.C.

1. Heard learned Counsel for the parties.

2. The Petitioner is one of the partners of M/s. Suresh Automobiles situated at Ram Baug, Mumbai Agra Road, Nasik. The Petitioner' s firm is a dealer of Indian Oil Corporation and runs a petrol pump at the aforesaid location. The products in the nature of petrol, diesel and other auxiliary goods and articles are supplied by the Indian Oil Corporation, which are sold by the Petitioner at the said petrol pump.

3. On 23rd February, 2001 the Respondent No.1 who is the Assistant District Supply Officer carried out inspection of the

petrol pump and took samples of petrol and diesel and one set of samples was retained with the Petitioner in sealed condition by the Respondent No.1 at the time of surprise check. It is the case of the Petitioner that when the Respondent No.1 conducted the test he found that the density of petrol and diesel confirmed to the standard norms but took samples of petrol and high speed diesel under panchanama. It is the grievance of the Petitioner that the copy of the panchanama was not furnished to him though he requested for. The Respondent No.1 took three samples of petrol from tank no.1 and three samples of diesel from tank no.1. Each of the sample was taken in a glass bottle and sealed with the government seal and signatures of the employee of the Petitioner's firm present on the spot was also taken. Out of the aforesaid these samples the Respondent No.1 took away four samples and two samples namely one of petrol from tank no.1 and one of diesel were handed over to the Petitioner in duly sealed condition.

4. It is the case of the Petitioner that he learnt from the Respondent No.1 orally that the samples were sent to the authorised laboratory and that the test report indicated that the samples of petrol from tank no.1 did not confirm to the specifications and was negative and in so far as sample of

diesel was concerned there were no allegations.

5. According to the Petitioner, inspite of seeking copy of the report from the Respondent No.1 he was not furnished with any of the copy of report and therefore, he corresponded with the Office of the Collector on 13th February, 2001, but he was not supplied any copy, therefore, the Petitioner filed an application dated 25th April, 2001 in the Court of Learned Chief Judicial Magistrate, Nasik stating that he was not being provided with the copy of the report and requested the learned Magistrate to forward the sealed sample of petrol drawn from tank no.1 to the authorised government laboratory.

6. It is the case of the Petitioner that inspite of the Court issuing notice to the Respondent No.1 he did not appear in the Court. On the other hand took a stand that the notice should be served to the Respondent No.4. Thereafter upon hearing the parties the learned Magistrate passed an order dated 27th April, 2001, under which the Petitioner was directed to produce two sealed samples before the Court and send the same for testing to the Government Laboratory, Wadala through the Court. Accordingly the two samples were forwarded through the Court to the Indian Oil Corporation, Central Laboratory at Wadala.

7. According to the Petitioner the test report of sample of petrol of tank no.1 showed that the samples passed all the specifications test and the said test report dated 7th May, 2001 in respect of sample drawn from tank no.1 was received by the learned Chief Judicial Magistrate, Nasik. On receipt of the report on 15th May, 2001 the Petitioner moved an application before the learned Magistrate requesting that the copies of test report obtained on sample given in his possession be forwarded to the Respondent No.1 and then further proceedings of the matter be dropped. On this the learned Magistrate passed an order directing the Respondent No.1 not to initiate any criminal proceedings against the Petitioner.

8. The said order passed by the learned Judicial Magistrate, First Class on 30th April, 2001 and on 16th May, 2001 came to be challenged by the Respondent by filing a criminal revision application No. 233 of 2001 and 405 of 2001. Both the revision applications came to be finally decided by the learned Additional Sessions Judge by a common order dated 14th August, 2002. The learned Additional Sessions Judge having allowed both the revision applications and quashed the orders passed by the learned Magistrate. The Petitioner has approached this Court not

only for a relief of quashing and setting aside the search and seizure of samples by the Respondent No.1 from the Petitioner's petrol pump, M/s. Suresh Automobiles on 23rd February, 2001 but also restraining Respondents from initiating any proceedings, and has also challenged the Motor Spirit and High Speed Diesel (Regulation of supply and distribution and prevention of malpractices) Order 1998 as unconstitutional and therefore it may be so declared and quashed.

9. The Petitioner has not chosen to challenge the order passed by the Court of Sessions. The Petitioner questions the Constitutional validity of the Motor Spirit and High Speed Diesel (Regulation of supply and distribution and prevention of malpractices) order 1998 on the ground that the said order under which the Respondents conducted surprise check and initiated action against the Petitioner's firm on the basis of the report of the samples drawn from the petrol tank no.1 of the Petitioner's petrol pump is violative of his rights under Article 21 as there is no provision under the said order of 1998 to enable a person aggrieved to have any remedy to challenge the report of the laboratory which will be used against him as conclusive evidence of the fact that petrol was not as per specification and met the required

standard and therefore, it is contended that the conclusions attached by law regarding the finding of the laboratory in the test report would disable the Petitioner from controverting the same finding because he has no rights to challenge such findings for want of specific provisions under the Order of 1998.

10. Per contra it is submitted that Petroleum Act or Rules do not provide for sending the samples by the owner of the petrol pump and therefore, the learned Magistrate could not have permitted to do so. Therefore, such an exercise committed by the learned Magistrate was not in accordance with law and therefore, the learned 2nd Additional Sessions Judge, Nasik was justified in quashing and setting aside the impugned orders passed by the learned Magistrate. It is submitted that the Petitioner is not left without a remedy as he has not followed the mandatory procedure provided in Section 20 of the Petroleum Act, 1934. It is submitted that the provisions of Order 1998 are in consonance with Petroleum Act, 1934 and has been adopted for the purposes of conducting search and seizure in so far as articles covered under the Essential Commodities Act, 1955 is concerned.

11. It is submitted that persons dealing in Motor Spirit

and High Speed Diesel have to abide by the rules and regulations which regulate supply and distribution in said fuel and that the order of 1998 usually provides for prevention of malpractices in the trade and that as the authorities have carried out surprise check and collected samples in accordance with the procedure laid down under the order of 1998, it cannot be said to be violative of Article 21 and 19(1) of the Constitution of India.

12. On behalf of the Central Government (Respondent No.4) no return on affidavit is filed. But they have stood by Respondents 1 to 3 and supported their plea and submitted that the order cannot be said to deprive the Petitioner of his rights in the case nor does it fore-close the right of the Petitioner to challenge the test report of the samples. It is specifically submitted that the Petitioner ought to have applied to the Magistrate for forwarding the sample after giving due notice to the government authorities which was Respondent No.2 and could have availed of his right but got the sample tested by the authorised laboratory at a premature stage and without following the procedure.

13. Mr. Mohite, the learned Counsel appearing for the Petitioner places reliance on the decision rendered by the

Hon' ble Supreme Court in the case of Amery Pharmaceuticals Vs. State of Rajasthan (2001) 4 Supreme Court Cases, 382 which was a case where the manufacturer of drug claims that he cannot be denied the remedy, the Government' sanalysis report before the Court in the case under Section 32 A of the Drugs and Cosmetics Act, 1940.

14. The Supreme Court considering the facts of the case held that :-

> *" The Court should lean towards an interpretation as would avert the consequences of depriving an accused of any remedy against such evidence. He must have the right to disprove or controvert the facts stated in such a document at least at the first tier. It is possible to interpret the provisions in such a way as to make a remedy available to him. When so interpreted the position is thus: the conclusiveness meant in Section 25(3) of the Act needs to be read in juxtaposition with the persons referred to in the sub-section. In other words, if any of the persons who receives a copy of the report of the Government Analyst fails to notify his intention to adduce evidence in controversion of the facts stated in the report within a period of 28 days of the receipt of the report, then such report of the Government Analyst could become conclusive evidence regarding the facts stated therein as against such persons. But as for an accused, like the manufacturer in the present case, who is not entitled to be supplied with a copy of the report of the government Analyst, he must have the liberty to challenge the correctness of the facts stated in the report by resorting to*

any other mode by which such facts can be disproved. He can also avail himself of the remedy indicated in sub-section (4) of Section 25 of the Act by requesting the court to send the other portion of the sample remaining in the court to be tested at the Central Drugs Laboratory. Of course, no court is under compulsion to cause the said sample to be so tested if the request is made after a long delay. It is for that purpose that a discretion has been conferred on the court to decide whether such sample should be sent to the Central Drugs Laboratory on the strength of such request. However, once the sample is tested at the Central Drugs Laboratory and a report as envisaged in Section 25(4) of the Act is produced in the court the conclusiveness mentioned in that sub-section would become incontrovertible."

15. Mr. Mohite pointed out to this Court that there has been various lapses on the part of the Respondent Authority while conducting search and seizure and drawing of sample is concerned as it was not in conformity with clause 5 of the Order, 1998 which provides for sampling. Further there is no provision in the order which gives the right to the dealer. We do not propose to dwell on the merits of the matter as the challenge before is restricted to constitutional validity of Order 1998, Clause 5 of the order, if read as a whole, provides sufficient safeguards. Sub clause 2 of the said clause 5 of order of 1998 is concerned two samples of Motor Spirit and of high diesel is required to be given to the dealer or transporter or concerned persons with instructions to

preserve the sample in his safe custody till the testing or investigations are completed. This distinctly implies that the dealer from whose petrol pump samples have been drawn gets a right to challenge the test report and has a remedy to dispute this report which is otherwise a conclusive evidence which stands against his innocence. But the stage at which such a right can be exercised is also spelt out and that is, he has to preserve the samples in his custody till the testing or investigations are completed. On the facts of the present case, the Petitioner moved the Court of learned Magistrate even before he could be communicated the test report or investigations in the case was completed.

16. On the other hand the Petitioner applied to the Magistrate on the basis of oral communication that the sample drawn from the petrol tank during the search and seizure do not confirm to the requirement indicated in Schedule 1 of the Order.

17. The learned Counsel for the Respondents rightly pointed out to us that the impugned orders passed by the Magistrate were not justified in the facts and circumstances and the Magistrate was not vested with any powers to direct the authority to drop further investigation and that the order

passed by the learned Additional Sessions Judge which have not been challenged by the Petitioner cannot be said to be illegal.

18. In the course of arguments Mr.Mohite submitted that the Petitioner may not press for the relief sought in this Petition but then he should have a fair opportunity to contest the matter in the trial Court. What we found from the proceedings before us is that this Court at the time of admitting the Petition on 22nd October, 2002 issued Rule, returnable in January, 2003 and stayed further proceedings in the matter. This Court also issued notices to the Attorney General to reply to the Constitutional Validity of the Order 1998 and this Petition was thereafter not attended by the Petitioner and on 3rd June, 2003 it came to be dismissed for want of prosecution and the interim relief was vacated. Subsequently the Petition was restored and that is how it has been listed before us for final hearing. It will not be proper for us to undo what has already taken place, but then one thing is clear that our orders should not intercept or intervene with the process of administration of criminal justice, i.e. Investigation and trial of the case which shall take its own course.

19. We therefore, propose to dispose of this Petition with the directions to the Respondents to file their report/complaint in the Court of competent jurisdiction, on such report/complaint being filed, it will be dealt by the learned Magistrate in accordance with law and all the defences available to the Petitioner will be open to him. Mr.Mohite submitted that the observations made by the learned Additional Sessions Judge while quashing and setting aside orders passed by the learned Magistrate should not prejudice the Petitioner in his defense. We may make it clear that the observations made by the learned Additional Sessions Judge in arriving at the conclusion of quashing and setting aside the impugned orders cannot be considered as a finding on merits in respect of any of the issues which would arise during the trial so as to give fair opportunity to the Petitioner to contest the matter.

20. With these observations the Petition is dismissed.

Rule discharged.

(SMT.ROSHAN DALVI, J.) (SHRI. J.N. PATEL, J.)